

## REMARKS

Claims 44-49 are active in this application. Claims 50-55 have been cancelled due to the Examiner's imposition of a restriction requirement.

The only issue remaining in this application is whether the present claims, i.e., Claims 44-49 are obvious in view of Brisson-Noel et al under the meaning of 35 U.S.C. § 103(a).

Applicants reiterate that Brisson-Noel et al do not, nor could, enable one to sequence the entire sequence of the plasmid to search for the coding regions because the plasmid and the bacteria from which the sequences were originally isolated were NOT in the public's possession. It was not until the filing and publication of the application to which the present application claims priority that the sequences themselves became available to the public. In support of Applicants' statement, a Declaration executed under 37 C.F.R. § 1.132 from Patrice Courvalin, a named inventor of this application, is attached hereto. As stated on page 2, paragraphs 6-8:

To the best of my recollection, natural plasmid pIP816 harboured by *E. faecium* strain BM4147 described in Brisson-Noel et al and characterized in my laboratory was not made available to anyone outside of my laboratory, before the filing date of the original application from which the present application No. 09/357,375 claims priority.

To the best of my recollection the bacteria containing the pIP816 plasmid and plasmid DNA were only available to the individuals working under my supervision.

The bacteria and the plasmid remained restricted to my laboratory until the filing date of the original application from which the present application claims priority.

Therefore, prior to the present invention BM41147 or the plasmid pIP816 were not available to the public and as a result Brisson-Noel does not support a *prima facie* case of obviousness.

Withdrawal of the rejection is requested.

Applicants submit that the present application is now in a condition for allowance.

Early notification of such allowance is requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Norman F. Oblon', written in a cursive style.

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